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### REMARKS

Claims 1, 5-8, 25-27, 31, 32 and 34 were "rejected under 35 USC 103(a) as anticipated by Afek et al, (U.S. Patent 5,748,901) in view of Lauck et al, (U.S. Patent 5,968,128)". This, of course, is an error, and applicant assumes that the rejection is not based on anticipation but on obviousness. In any event, applicant respectfully traverses.

1. Prior to the most recent filing, dated July 7, 2004 (which was an RCE), the original claim 1 had been rejected under 35 USC 102 over the above mentioned Afek reference. In a filing dated 9/24/02 applicant traversed the rejection and provided a detailed analysis to demonstrate that the Examiner's reasons for rejecting the claims were in error.
2. In a final Office action dated July 6, 2002, the Examiner failed to rebut, or even challenge, at least a number of the reasons that applicant set forth as sufficient to confer patentability on claim 1 but nevertheless repeated the claim 1 rejection, verbatim.
3. In the July 7, 2004 filing applicant raised the fact that the Examiner had failed to rebut applicant's arguments (at page 8 of the Response), and repeated in an expanded form (9 pages of very detailed and extensive argument) the reasons for traversing the rejection of the original claim 1.
4. Nevertheless, in order to expedite prosecution, applicant amended claim 1 and further argued that the amended claim even more clearly overcomes the 102 rejection.
5. In the present Office Action the Examiner rejects claim 1 under 35 USC 103, points to the Afek reference for the proposition that it teaches all of the claim 1 limitations except for the limitation added in the July 7 2004 filing, and with respect to the latter limitation the Examiner points to a new reference (the 5,968,128 patent).
6. As for the applicant's extensive arguments for patentability of the amended claim 1, and of the other claims, all that the Examiner states is that

Applicant has amended claim 1 adding the features of "to traffic rate of no other session." Applicant did not previously claim these features in the combinations now claimed. The applicant's arguments filed 8/18/04 have been fully considered but they are moot in view of the new ground of rejection.

Applicant respectfully disagrees.

- (a) If applicant's argument in the previously filed response is correct then applicant's argument is not only not moot, but precisely to the contrary -- it is dispositive in

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favor of patentability. This is necessarily so because applicant's argument pertains to claim 1 limitations *that have not been amended at all* and to which the newly cited reference is not applied by the Examiner. It is respectfully submitted that claim 1 should have been allowed, and if not, then applicant is owed an explanations as to which of applicant's arguments, if any, are in error.

- (b) In addition to applicant's amendment of claim 1 and argument in favor of patentability of claim 1, applicant has made extensive arguments to traverse the rejection of various claims based on a combination of references. Those arguments are also not moot; and if the Examiner is unable to rebut them (which applicants believe to be the case) then those claims must be allowed. It is respectfully submitted that the remaining claims should have been allowed, and if not, then applicant is owed an explanations as to which of applicant's arguments, if any, are in error.

- (c) Applicant is not aware of any filing on 8/18/04.

7. As for the limitation that had been added to claim 1, the Examiner admits that "Afek does not explicitly discloses to traffic rate of no other session" but asserts that

Lauck discloses a system for controlling a transmission rate of source station on a computer network to select a fair transmission rate for each session (virtual circuit) (col. 3, lines 25-32).

Applicant respectfully submits that even if Lauck does disclose a system for selecting a fair transmission rate for each session, that does not mean that the Lauck system selects the fair transmission rate for each session based on any evaluation that is "related to rates of said incoming traffic, and to traffic rate of no other session," which is what claim 1 specifies. In other words, the Examiner's assertion, even if true, does not defeat the patentability of claim because it does not supply the teaching that the Examiner has admitted is missing in the Afek reference.

In fact, the fair transmission rate that is evaluation by the Lauck system is evaluated based on the rates of all sessions that enter the switch, as can be seen from the teachings at col. 7, lines 43-62 (where A-fair value is set to C/N, where N is the number of virtual circuits passing through the switch, and the fair transmission rate is based on A-fair).

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8. In light of the above, it is respectfully submitted that claim 1 is patentable because Afek does not disclose the claim 1 limitations that the Examiner asserts it does, and neither does the Lauck reference disclose the claim 1 limitation that the Examiner asserts it does.

9. The patentability of claims 5-8, 25-27, 31, 32 and 34 is based at least on the arguments presented relative to the fact that the Afek reference does not have a step of "evaluating a session incremental reward function that is related to rate of said incoming traffic, and to traffic rate of no other session."

10. Claims 2-4, 21, 23, and 35 were rejected under 35 USC 103 as unpatentable over Afek in view of Lauck and further in view of Mitra et al, US Patent 6,331,986. Applicant respectfully traverses. The reasons given by the Examiner for rejecting claims 2-4, 21, and 35 cut-and-paste copies of the previously lodged rejections, which were extensively addressed by applicant in the previous Office Action response. Applicant has received no indication that any consideration was given to applicant's presented arguments, and consequently, there is no basis for further explanations. Applicant believes that the combination of references does not make the claims obvious, applicant has provided arguments that support that belief, the Examiner failed to rebut or even address applicant's argument, and therefore respectfully requests that the Examiner peruse the arguments and either allow the claims or provide applicant with a NON-FINAL rejection that offers an explanation as to why applicant's arguments do not control.

11. As for claim 23 – which is newly rejected over the above-identified set of references (previously it was rejected under 35 USC 102 in view of the Afek reference), the Examiner asserts that at col. 8, lines 12-17 the Mitra reference teaches that "a router routes each stream to a set of permissible routes for the stream." Actually, the cited paragraph teaches that

the decision variables (whose values are optimized in order to achieve the objective stated above) are the link capacities  $C_l^{(\Omega)}$  and the traffic intensity  $\rho_{sr}^{(\Omega)}$  of each stream and VPN that is admitted to the network and offered to a route  $r$  belonging to the set  $\mathbb{R}_{(s,r)}^{(\Omega)}$  of permissible routes for that stream. (The various routes are indexed by the symbol  $r$ .)

What this teaches is that a stream can be assigned to go through one route or another route from a set of permissible routes. It does not teach or suggest that some packets of a

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stream take one route and the remaining packets of the stream take another route; i.e., that a given stream concurrently use two different routes. In other words, the Mitra reference does not teach that which claim 23 specifies.

12. Claims 12, 14, and 15 were rejected under 35 USC 103 as being unpatentable over Afek in view of Lauk as applied to claim 1, and further in view of Szentesi, US patent 5,844,886. Applicant respectfully traverses.

These claims were last rejected in view of Afek combined with Szentesi but, effectively, it is the same rejection: a combination of that which is used to reject claim 1 combined with the Szentesi reference to rejection claims 12, 14, and 15. In support of the instant rejection, the Examiner's provided with explanatory text which, again, is a cut-and-paste copy of the rejection presented before and extensively addressed in the last Response by applicant. Here, too, the Examiner has not shed any light at to what interpretation or logical errors if any exist in applicant's arguments. To restate the argument (perhaps more succinctly),

As to claim 12:

- a) FIG. 3 represents the relation of traffic flow and revenue, as asserted by the Examiner;
- b) The fact that FIG. 3 represents the relation of traffic flow and revenue, does NOT lead to the conclusion that FIG. 3 describes a session incremental function.
- c) The FIG. 3 relationship is neither an incremental function, nor is it related to a session
- d) A derivative of the FIG. 3 curve would make it an incremental function but would still not make it a session incremental function.
- e) Such a derivation would not be a "positive, decreasing" function with respect to session, because beyond load  $t_m$ , the derivative is clearly negative.
- f) FIG. 3 function itself also does not meet the "positive, decreasing" limitation of claim 12 (since it's increasing at loads smaller than  $t_m$ ).

As to claims 14 and 15:


The above argument -- particularly b) and f) -- apply.

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In light of the above amendments and remarks, applicant respectfully submits that all of the Examiner's rejections have been overcome. Reconsideration and allowance of the outstanding claims are respectfully solicited.

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Respectfully,  
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